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Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 550

EARL MOORE, PETITIONER,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY,  
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT AND BRIEF IN SUPPORT  
THEREOF.

GEO. BUTLER,  
Jackson, Mississippi,  
GARNER W. GREEN,  
Jackson, Mississippi,  
Counsel for Petitioner.

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# Supreme Court of the United States

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OCTOBER TERM, 1940.

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EARL MOORE, PETITIONER,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY,  
RESPONDENT.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices  
of the Supreme Court of the United States:

### PRELIMINARY.

Your petitioner, Earl Moore, a citizen of the United States residing in Hinds County, in the State of Mississippi, respectfully prays that writ of certiorari issue to review the judgment of the United States Circuit Court



of Appeals for the Fifth Circuit entered June 20, 1940, petition for rehearing denied August 8, 1940, by which said judgment said Court of Appeals reversed judgment theretofore rendered in the District Court of the United States for the Jackson Division of the Southern District of Mississippi, in favor of petitioner, plaintiff there, against respondent, Illinois Central Railroad Company, defendant in said District Court.

### **SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.**

Petitioner filed his suit here involved against the respondent railroad company for a lump sum as damages for the breach of a contract of employment. Petitioner was a railroad switchman and the contract involved is the contract between the railroad and the labor union of which petitioner was a member. The contract was made an exhibit to the declaration or complaint.

The suit was first filed in the Mississippi State Court for an amount less than the jurisdiction of the National Court. In the Mississippi State Court, amongst other defenses not here involved, respondent railroad company invoked and plead the Mississippi Three Year Statute of Limitations, the same being the statute applicable to suits on open accounts and unwritten contracts.

The cause came on for hearing, and said state trial court sustained petitioner's demurrer to respondent's said plea of the Mississippi Three Year Statute of Limitations and thereby held that said three year statute was not applicable, but rendered judgment against petitioner on other pleas not here involved.

Petitioner appealed from said judgment to the Supreme Court of the State of Mississippi, the court of last resort of said state, and on said appeal the Mississippi Supreme Court, in this same case, held that the Mississippi Three Year Statute of Limitations did not apply,

but that the suit, being a suit on a written contract and not on an unwritten contract, was governed by the Mississippi Six Year Statute of Limitations, and accordingly was not barred. The judgment of the lower court was reversed and the cause remanded for further proceedings.

When the cause was returned to the lower court in accordance with the decision of the Supreme Court of the State of Mississippi, the declaration or complaint was amended and damages were demanded in an amount within the jurisdiction of the National Court.

Thereupon, petitioner, plaintiff there, being a resident of the State of Mississippi, and respondent railroad company being a non-resident of the State of Mississippi, a diversity of citizenship existed and upon petition of respondent railroad company, the cause was removed to the United States District Court for the Jackson Division of the Southern District of Mississippi.

In the District Court respondent railroad company again invoked and plead the Mississippi Three Year Statute of Limitations.

When the cause came on for hearing in the District Court on said plea invoking the Mississippi Three Year Statute of Limitations, the District Court held in accordance with the decision of the Mississippi Supreme Court in this same case, that the Mississippi Three Year Statute of Limitations did not apply, but that the suit was governed by the Mississippi Six Year Statute of Limitations and was not barred, and in a trial on the merits of the case, judgment was rendered in favor of petitioner and against respondent railroad company.

From said judgment respondent railroad company appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which court reversed the District Court and has held contrary to the Mississippi Supreme Court in this same case that the Mississippi Three Year Statute, and not the Mississippi Six Year Statute of Limitations, is the applicable statute.



## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

It is respectfully submitted that the opinion of the Circuit Court of Appeals for the Fifth Circuit in this cause holding that the Mississippi Three Year Statute of Limitations invoked by respondent, and not the Mississippi Six Year Statute of Limitations, is applicable, is in direct conflict with the decision of the Supreme Court of the State of Mississippi in this same cause construing and applying its own Statute of Limitations, which statute was invoked by respondent, which said decision of the Supreme Court of the State of Mississippi has not been reversed or in any manner modified and is not in conflict with any prior or subsequent decision of said court, but is in accord with prior decisions thereof. *Moore v. Illinois Central Railroad Company*, 180 Miss. 276, 176 So. 595.

Said opinion of the Court of Appeals for the Fifth Circuit is likewise in conflict with prior decisions of the Supreme Court of the State of Mississippi wherein it is held that such suits are suits on written contracts to which the Mississippi Six Year Statute of Limitations is applicable and not the Mississippi Three Year Statute of Limitations. *Gulf & Ship Island Railroad Company v. McGlohn*, 183 Miss. 465, 184 So. 71; Same Case, 179 Miss. 396, 174 So. 250; and *Y. & M. V. R. R. Co. v. Sideboard*, 161 Miss. 4, 133 So. 669.

Said opinion of the Court of Appeals in declining to follow the decision of the Supreme Court of the State of Mississippi in this same case, as heretofore set forth, and the law of this state as announced in the decisions hereinabove referred to, is in conflict with the decisions of the Supreme Court of the United States in *Erie Railroad Company v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188; *Ruhlin v. New York Life Insurance Company*, 304 U. S. 202, 82 L.

Ed. 1290; and *Wichita Royalty Company v. Bank*, 306 U. S. 103, 83 L. Ed. 515.

The decision of the Court of Appeals in failing to follow the construction and application of the Mississippi Statute of Limitations placed thereon by the Mississippi Supreme Court is in direct conflict with the decisions of the Supreme Court of the United States in the following cases:

*Bauserman v. Blunt*, 147 U. S. 647, 37 L. Ed. 316;

*Balkan v. Woodstock Iron Company*, 154 U. S. 177, 38 L. Ed. 953;

*Great Western Telephone Co. v. Purdy*, 162 U. S. 329, 40 L. Ed. 986; and

*Security Trust Co. v. Black River Bank*, 187 U. S. 111, 47 L. Ed. 147.

And is in direct conflict with the various courts of appeal as follows:

First Circuit, *Andrews v. Bacon*, 38 Fed. 777.  
Second Circuit, *Farley v. Carey Show Print Co.*, 249 Fed. 476.

Third Circuit, *Wilson v. Smith*, 117 Fed. 707; and  
*First Natl. Bk. v. Anglo, etc., Bank*, 37 F. 2d 564.

Fourth Circuit, *Wheeling Bridge Co. v. Reymann Brewing Co.*, 90 Fed. 189;

*Brunswick Terminal Co. v. Natl. Bk.*, 99 Fed. 635; and

*Weems v. Carter*, 30 F. 2d 202.

Sixth Circuit, *Salyer v. Consolidation Coal Co.*, 246 Fed. 794.

Eighth Circuit, *Taylor v. Union Pac. R. R. Co.*, 123 Fed. 155;

*Young v. Alexander*, 29 F. 2d 555; and

*Futrell v. Branson*, 104 F. 2d 409.

Ninth Circuit, *Bullion & Exchange Bank v. Hegler*, 93 Fed. 890; and

*Van Dyke v. Parker*, 83 F. 2d 35.

*Tenth Circuit, Arkansas Fuel Oil Co. v. City of Blackwell*, 87 F. 2d 50.

Wherefore, a writ of certiorari is respectfully asked.

GEO. BUTLER,

Jackson, Mississippi,

GARNER W. GREEN,

Jackson, Mississippi,

*Counsel for Petitioner.*

Service of petition for certiorari, brief in support thereof and a copy of printed record is hereby acknowledged, this the \_\_\_\_\_ day of October, 1940.

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*Counsel for Respondent.*

# Supreme Court of the United States

OCTOBER TERM, 1940.

No. \_\_\_\_\_

EARL MOORE, PETITIONER,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY.

## PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices  
of the Supreme Court of the United States:

### OPINIONS DELIVERED IN THE COURTS BELOW.

The opinion of the District Court of the United States for the Jackson Division of the Southern District of Mississippi is in the record, pages 196-199, inclusive. This opinion is reported, *Moore v. Illinois Central Railroad Company*, 24 Fed. Supp. 731. The opinion of the Circuit Court of Appeals for the Fifth Circuit is in the record, pages 218-232, inclusive (including dissenting opinion). This opinion of the Circuit Court of Appeals is reported *Illinois Central Railroad Company v. Moore*, and reverse title, 112 F. 2d 959 (dissenting opinion page 967).

## **STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.**

1. Section 240 (a) of the Judicial Code, U. S. C., Title 28, Section 347, defining the jurisdiction of the Supreme Court of the United States, provides that in any case in the Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by certiorari that the cause be certified to the Supreme Court. Subsection 8 (a) of said Section 240 provides that application for said writ may be filed within three months after the entry of judgment, and that for good cause said time may be extended not exceeding sixty days by a Justice of said Court.

2. The decision of the Circuit Court of Appeals and the judgment rendered thereon were entered on June 20, 1940 (R. p. 233). Petition for rehearing in the Circuit Court of Appeals was denied on August 8, 1940 (R. p. 40). The time for filing petition for rehearing, supporting brief, and the record ran from said last mentioned date. The record in this Court shows that the petition for writ of certiorari, supporting brief, and the record was filed in this court within the statutory period of three months.

3. The nature of the case and the ruling of the court below which are deemed to bring the case within the jurisdictional provisions relied on have been briefly set forth and stated in the petition for writ of certiorari and will be more fully hereinafter presented in this brief under the headings "Statement of Case" and "Argument."

4. The cases believed to sustain the jurisdiction of this Court have likewise been referred to in the petition for writ of certiorari and will be hereinafter referred to in this brief.



## STATEMENT OF THE CASE.

The case has been briefly stated in the petition for writ of certiorari filed herewith and we will undertake only to supplement such statement in so far as may be deemed material to the consideration of the question presented.

Petitioner Moore was a railway switchman employed by respondent railroad company in its Jackson, Mississippi, yards, and as such was a member of the labor union with which respondent railroad company had a contract governing such employment. The effect of the contract as held by the Supreme Court of the State of Mississippi and of the Circuit Court of Appeals in the respective opinions in this case hereinbefore referred to is that no employee shall be discharged without just cause. Petitioner, conceiving that he had been discharged without just cause, filed his suit here involved against the respondent railroad company for a lump sum as damages for breach of his contract of employment.

The suit was first filed in the Circuit Court of the First District of Hinds County, Mississippi, an intermediate trial court of the State of Mississippi. The suit as first filed was for an amount less than the jurisdiction of the National Court. The declaration or complaint so filed and involved appears in the record (R. pp. 1-3, incl.). The contract involved between respondent and the labor union was made an exhibit to the declaration or complaint and likewise appears in the record (R. pp. 4-17, incl.). The suit was and is clearly a suit for damages for the breach of said written contract.

In the Mississippi State Court, amongst other defenses not here involved, respondent railroad company invoked and plead the Mississippi Three Year Statute of Limitations, the same being the statute applicable to suits on open accounts and unwritten contracts (R. p. 39).

Petitioner demurred to said plea assigning as ground for demurrer that the suit was based upon a written con-



tract exhibited with the declaration and not upon a verbal contract (R. p. 38).

The cause came on for hearing, and said state trial court sustained petitioner's demurrer to respondent's said plea of the Mississippi Three Year Statute of Limitations, and thereby held that said Three Year Statute of Limitations was not applicable to petitioner's suit, but said state trial court rendered judgment against petitioner on other pleas which are not here involved (R. pp. 53-55).

Petitioner appealed from said adverse judgment and respondent railroad company filed its cross appeal and complained of the action of the lower court in holding that said Three Year Statute of Limitations was not applicable to petitioner's suit. The cause came on for hearing in the Supreme Court of the State of Mississippi and the Supreme Court of said state reversed the judgment of the lower court and remanded the cause thereto for further proceedings; specifically holding, however, that the Mississippi Three Year Statute of Limitations did not apply, but that the suit was a suit on a written contract and was governed by the Mississippi Six Year Statute of Limitations. *Moore v. Illinois Central Railroad Company*, 180 Miss. 276, 176 So. 593.

When the cause was reversed by the Supreme Court of the State of Mississippi, the same was returned to the lower court for further proceedings therein not inconsistent with said Supreme Court decision. When the same was returned to the lower court, the declaration or complaint was amended and damages were demanded in an amount within the jurisdiction of the National Court (R. pp. 56-57).

Thereupon, petitioner, plaintiff there, being a resident of the State of Mississippi, and respondent railroad company, defendant there, being a non-resident of the State of Mississippi, a diversity of citizenship existed, and upon petition of respondent railroad company, based solely upon the ground of diversity of citizenship, the cause was removed to the United States District Court

for the Jackson Division of the Southern District of Mississippi (R. p. 57).

In the District Court respondent railroad company again invoked and plead the Mississippi Three Year Statute of Limitations, along with other defenses not involved here, in the exact language as the plea to the same effect which had theretofore been filed in the state trial court and had been before the Supreme Court and passed upon by the Supreme Court of the State of Mississippi in *Moore v. Illinois Central Railroad Company, supra*. This plea in the District Court is designated in the record as special plea No. 6 (R. pp. 75-76).

When the cause came on for hearing in the District Court on said plea invoking the Mississippi Three Year Statute of Limitations, the District Court held in accordance with the decision of the Mississippi Supreme Court in the same case (*Moore v. Illinois Central Railroad Company, supra*) that the Mississippi Three Year Statute of Limitations did not apply, but that the suit was governed by the Mississippi Six Year Statute of Limitations and was not barred (See order, R. p. 86). And in a trial on the merits of the case, judgment was rendered in favor of petitioner and against respondent railroad company in the amount of \$4,183.20 (R. p. 200).

From said judgment respondent railroad company appealed to the Circuit Court of Appeals for the Fifth Circuit, which court reversed the District Court and held contrary to the Mississippi Supreme Court in this same case that the Mississippi Three Year Statute of Limitations, and not the Mississippi Six Year Statute of Limitations, is the applicable statute (R. pp. 218-232, Incl.), Mr. Justice Holmes dissenting therefrom.

**SPECIFICATION OF ERROR URGED.**

Respondent railroad company raised all of the defenses in the District Court which had theretofore been raised in the state court and which were discussed by the Supreme Court of the State of Mississippi in *Moore v. Illinois Central Railroad Company, supra*. The District Court ruled against the contention of the respondent railroad company on each of said defenses, and, as stated, judgment was rendered in favor of petitioner and against respondent railroad company there. On appeal the Court of Appeals for the Fifth Circuit reached the same result as did the District Court on every question involved in the law suit, except the Court of Appeals reversed the District Court on the sole ground that the District Court committed error in holding, as did the Supreme Court of the State of Mississippi in this same case, that the Three Year Statute of Limitations of the State of Mississippi was not the applicable statute (See judgment of Court of Appeals, R. p. 233, opinion of Court of Appeals, R. pp. 218-232, incl., *Illinois Central Railroad Company v. Moore*, 112 F. 2d 959).

So, the only error assigned and to be urged here is the action of the Circuit Court of Appeals in holding that the Three Year Statute of Limitations of the State of Mississippi is applicable in this cause.

## ARGUMENT.

The Mississippi statute which fixes the period of limitation on actions on unwritten contracts at three years is Section 2299 of the Code of Mississippi of 1930, which reads as follows:

“Actions to be brought in three years.—Actions on an open account or stated account not acknowledged in writing, signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three years next after the cause of such action accrued, and not after.”

Section 2292 of this said Code fixes the period of limitation in other actions, including actions on written contracts, at six years. This Section reads as follows:

“Actions to be brought in six years.—All actions for which no other period of limitation is prescribed shall be commenced within six years next after the cause of such action accrued, and not after.”

When this identical case was first filed in the Mississippi State Court, respondent, who was the defendant there, invoked Section 2299 of the Code of Mississippi of 1930, the Three Year Statute of Limitations, and plead the same in bar of this suit.

In this same law suit, in this identical case, the Supreme Court of the State of Mississippi, the court of last resort in said state, in its decision therein, *Moore v. Illinois Central Railroad Company*, 180 Miss. 276, 176 So. 595, has held that of the two Mississippi statutes of limitations this was an action in which the Mississippi Three Year Statute of Limitations was not applicable, but the Mississippi Six Year Statute was applicable, using the following language:

"The appellee's sixth plea is to the effect that the appellant's cause of action is barred by section 2299, Code of 1930, the 3-year statute of limitations, for the reason that 'the contract of employment between the plaintiff and this defendant was verbal, and the alleged breach of the contract occurred on February 15th, 1933, more than three years before the appellant's suit was begun.'

"The appellant's suit is not on a verbal contract between him and the appellee, but on a written contract made with the appellee, for appellant's benefit, by the Brotherhood of Railroad Trainmen; consequently, section 2299, Code of 1930, has no application, and the time within which the appellant could sue is six years under section 2292, Code of 1930. The demurrer to this plea, therefore, was properly sustained. This question was presented by a cross-appeal by the appellee."

Subsequent to the decision herein by the Mississippi Supreme Court, when this case on the sole ground of diversity of citizenship was removed to the Federal Court, respondent filed the identical plea which had been before the Mississippi Supreme Court and again invoked Section 2299 of the Code of Mississippi of 1930, the Mississippi Three Year Statute of Limitations.

Without these Mississippi statutes of limitations, Section 2299, the three year statute, and Section 2292, the six year statute, there would be no period of limitation to this action which respondent might have invoked. There is no period of limitation fixed thereon by the Federal law.

We respectfully submit that when a state statute of limitations is invoked and applied in a Federal Court sitting in such state, the same should be construed and applied as construed and applied by the decisions of the highest court of such state.

The rule in this regard is announced in the text 25 C. J. 849, as follows:



"State statutes of limitations, as construed by the state court, should be applied in actions at law in a federal court where they are applicable \* \* \*."

And again, 37 C. J. 697, as follows:

"Where a state statute of limitations has been construed by the highest court of the state as *not applying to existing causes of action*, the same construction of the same statute will be adopted by federal courts, if not in conflict with the paramount authority of the Constitution or laws of the United States or with the fundamental principles of justice and common right."

This is but the same rule which has been repeatedly announced and followed by the Supreme Court of the United States and the Court of Appeals of the various circuits long before the decisions of this court in *Erie Railroad Company v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188; and *Ruhlin v. New York Life Insurance Company*, 304 U. S. 202, 82 L. Ed. 1290. Certainly when the Federal Court applies the statute of limitations of a state, it must apply the same as construed and as applied by the court of last resort of such state.

*Bauserman v. Blunt*, 147 U. S. 647, 37 L. Ed. 316;  
*Balkan v. Woodstock Iron Company*, 154 U. S.  
 177, 38 L. Ed. 953;

*Great Western Telephone Co. v. Purdy*, 162 U. S.  
 329, 40 L. Ed. 986; and

*Security Trust Co. v. Black River Bank*, 187 U. S.  
 111, 47 L. Ed. 147.

First Circuit, *Andrews v. Bacon*, 38 Fed. 777.

Second Circuit, *Farley v. Carey Show Print Co.*,  
 249 Fed. 476.

Third Circuit, *Wilson v. Smith*, 117 Fed. 707; and  
*First Natl. Bk. v. Anglo, etc., Bank*, 37 F. 2d 564.

Fourth Circuit, *Wheeling Bridge Co. v. Reymann*  
*Brewing Co.*, 90 Fed. 189;

*Brunswick Terminal Co. v. Natl. Bk.*, 99 Fed.  
 635; and



*Weems v. Carter*, 30 F. 2d 202.

Sixth Circuit, *Salzer v. Consolidation Coal Co.*,  
246 Fed. 794.

Eighth Circuit, *Taylor v. Union Pac. R. R. Co.*,  
123 Fed. 155;

*Young v. Alexander*, 29 F. 2d 555; and

*Futrell v. Branson*, 104 F. 2d 409.

Ninth Circuit, *Bullion & Exchange Bank v. Hegler*, 93 Fed. 890; and

*Van Dyke v. Parker*, 83 F. 2d 35.

Tenth Circuit, *Arkansas Fuel Oil Co. v. City of Blackwell*, 87 F. 2d 50.

As aptly stated by the Court of Appeals for the Tenth Circuit in *Arkansas Fuel Oil Company v. City of Blackwell*, *supra*, where the Oklahoma statute of limitations was involved; "for limitation of actions is purely statutory, and the Oklahoma statutes mean what the Supreme Court of Oklahoma says they mean."

The Mississippi Supreme Court in this identical case, *Moore v. Illinois Central Railroad Company*, 180 Miss. 276, 176 So. 595, has said that the Three Year Statute of Limitations which respondent has invoked does not apply to this particular suit, but that the Mississippi Six Year Statute is the applicable statute.

*Moore v. Illinois Central Railroad Company*, *supra*, construing and applying its own statute of limitations in this identical case, stands as the law of the State of Mississippi as declared by its highest judicial tribunal. It has not modified; retracted, altered or amended its opinion. Instead of altering, or modifying, or retracting, or amending said opinion, the Supreme Court of the State of Mississippi has in effect reaffirmed the same. A vigorous suggestion of error was filed attacking said opinion, and the same was by the Court overruled on January 3, 1938. (See official report, 180 Miss. 276).

The decision of the Mississippi Court in *Moore v. Illinois Central Railroad Company*, *supra*, this identical case, should control. *Wichita Royalty Company v. Bank*, 306 U. S. 103, 83 L. Ed. 515.

As it will appear, Section 2299, the Three Year Statute of Limitations of the State of Mississippi, applies to actions on unwritten contracts, and Section 2292 of the Code of Mississippi of 1930, the Six Year Statute of Limitations, applies to actions on written contracts.

*Moore v. Illinois Central Railroad Company*, *supra*, in holding as hereinbefore set forth is in no sense blazing a trail in Mississippi jurisprudence. The decision therein on the point here involved is in accord with prior decisions of the Mississippi Court. The Supreme Court of the State of Mississippi in two fully considered opinions has held that a suit of the character involved here is a suit on a written contract; a suit for damages for breach of a contract made for the benefit of a class of persons; thus, in effect holding in these two cases that in such a suit the Six Year Statute of Limitations, and not the Three Year Statute of Limitations is applicable. *Gulf & Ship Island Railroad Company v. McGlohn*, 183 Miss. 465, 184 So. 71; *Same Case*, 179 Miss. 396, 174 So. 250; and *Y. & M. V. R. R. Co. v. Sideboard*, 151 Miss. 4, 133 So. 669.

This is not a matter governed by the Federal Constitution or by acts of Congress. The Supreme Court in *Erie Railroad Company v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188, has said that except in matters so governed the Federal Court sitting in a state should follow the law of such state whether so declared by its legislature or its highest court.

This case reached the Federal Court and reached the Circuit Court of Appeals for the Fifth Circuit solely by reason of diversity of citizenship of the parties.

As has been very aptly stated, the decision in *Erie Railroad Company v. Tompkins*, *supra*, was intended to prevent the arising of a difference in the substantive rights of litigants as a result of the mere accident of diversity of citizenship.

If the decision of the Court of Appeals is allowed to stand, we have this queer situation; a situation typical of the kind the Supreme Court was endeavoring to prevent by its decisions in the *Erie Railroad Company* case, *supra*, and in the *Wichita Royalty Company* case, *supra*. Petitioner's suit is barred by the Three Year Statute of Limitations of the State of Mississippi by the mere accident of diversity of citizenship and because he happened to sue for an amount within the jurisdiction of the Federal Court. His brother in toil, his next door neighbor, has an identical suit against the identical defendant and in which the exact time has elapsed which had elapsed at the time petitioner brought his suit. The only difference is the neighbor's suit is for only \$2,500. He brings his suit in the state court and there it remains, and under the decision of the Supreme Court of the State of Mississippi in *Moore v. Illinois Central Railroad Company*, *supra*, petitioner's own suit, his neighbor's case is not barred and friend neighbor can maintain his suit. In other words, A sues the railroad company in a suit of this character for \$3,000. His suit remains in the state court, and he can maintain it because the Mississippi Supreme Court in applying its own statute has said it is not barred by the Mississippi Three Year Statute of Limitations. B sues the railroad company in the same court, in an identical suit, but he sues for \$3,001. His case is moved to the Federal Court and is barred by the Mississippi Three Year Statute, so B loses and A wins just because the railroad company owes B one dollar more than it owes A. Again, Moore, petitioner, has another fellow worker, another neighbor, who has an identical claim against the Yazoo & Mississippi Valley Railroad Company: This last men-

tioned railroad company is a subsidiary corporation domiciled in the State of Mississippi. He likewise is a resident of the State of Mississippi. He has a claim against his railroad exactly like petitioner's. Even the amount involved is the same. He files his suit in the State Court, and because the accident of diversity of citizenship does not exist, his suit is not barred by the Three Year Statute of Limitations and he can maintain his suit under the authority of the decision of the Supreme Court of the State of Mississippi rendered in petitioner Moore's own law suit.

We do not believe that a situation such as illustrated was ever intended, or that such a situation should or will be allowed to stand. With all deference, if the *Erie Railroad Company case, supra*, and *Wichita Royalty Co. v. Bank, supra*, do not eliminate such a situation, we have wholly misconstrued the intent thereof.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and that this Court should grant said petition for a writ of certiorari herein, directing said Honorable Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in this cause to this Court so that this Court may review and act thereon as of right and according to law and as ought to be done.

Respectfully submitted,

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GARNER W. GREEN,  
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*Counsel for Petitioner.*